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*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Access Charge Reform  
Price Cap Performance Review  
for Local Exchange Carriers

CC Docket No. 96-262/  
CC Docket No. 94-1

Transport Rate Structure  
and Pricing

CC Docket No. 91-213

Usage of the Public Switched  
Network by Information Service  
and Internet Access Providers

CC Docket No. 96-263

**REPLY COMMENTS OF MEDIA ACCESS PROJECT, CENTER FOR  
DEMOCRACY AND TECHNOLOGY, THE BENTON FOUNDATION  
ELECTRONIC FRONTIER FOUNDATION, AND VOTERS  
TELECOMMUNICATIONS WATCH**

Media Access Project, the Center for Democracy and Technology, the Benton Foundation, Electronic Frontier Foundation, and Voters Telecommunications Watch (hereinafter collectively referred to as "Commenters") respectfully submit these reply comments to address arguments raised in response to the questions in ¶¶282-290 of the Commission's *Notice of Proposed Rulemaking* in the above-referenced docket ("*NOPR*").

As an initial observation, there has been an insufficient discussion among the various parties of how the proposed revisions to the information service provider pricing scheme would affect the *users* of the Internet.<sup>1</sup> This near-silence, taken in light of the importance of this issue to the citizens that use the Internet, should show the Commission that it is all the more critical to consider the proposals more carefully. Any change which would result in the end-users being

<sup>1</sup>Commenters have already observed that the *NOPR* is similarly devoid of any mention of Internet users. Comments of MAP, *et al.* at 1-3.

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subject to a usage-based pricing scheme, whether or not rates are set at current levels, will have a significant effect on the citizens who use this technology every day to voice opinions, educate themselves, exchange information, conduct commerce, and keep in touch with family. Usage-based prices may well place this medium out of reach for many Americans, especially those with fixed or lower incomes. Even those who can pay the new fees may be discouraged from conducting many expressive activities that enhance speech over the Internet, and benefit society as a whole. In determining how to allocate prices among the various industry interests in this proceeding, the Commission should remain mindful of its mission - to serve the *public* interest.

**I. THE COMMISSION SHOULD NOT APPLY THE EXISTING ACCESS CHARGE SCHEME TO INTERNET SERVICE PROVIDERS.**

The overwhelming majority of commenters that have addressed the issue agree with the Commission's tentative conclusion not to require information service providers to pay interstate access charges as currently structured. *E.g.*, Comments of AT&T at 71; Comments of America Online at 2-3 ("AOL Comments"); Joint Comments of Bell Atlantic and NYNEX at 62 ("Bell Atlantic/NYNEX Comments"). These commenters generally agree with the Commission's determination that the existing access charge system includes non-cost-based rates and inefficient rate structures and that therefore there is "no reason to extend this regime to an additional class of users, especially given the potentially detrimental effects on the growth of the still-evolving information services industry." *NOPR* at ¶288. Opinions diverge on whether Internet service providers ("ISPs") should ultimately have to pay *any* access charges, but this is a question asked in, and best left for, the *Notice of Inquiry* ("NOI").

Only a few parties have urged the Commission to apply the existing access charge scheme

to ISPs. For example, Pacific Telesis argues that the "Commission must consider these rule changes here, in [the *NOPR*], because this is where the Commission is determining the regulations that will govern the interstate access networks that support information services." Comments of Pacific Telesis Group at 75 ("PacTel Comments"). Frontier Corporation exhorts the Commission to assess interstate access charges upon ESPs, including Internet service providers, "until a permanent solution is developed." Comments of Frontier Corporation at 20 ("Frontier Comments"). *See also*, United States Telephone Association at 83 (Commission should establish principle "immediately" that ISPs pay usage-based rates)("USTA Comments").

The *NOI*, not this *NOPR*, is the proper forum to discuss such a remedy. The *NOI* proposes to conduct exacting scrutiny into the relationship between the public switched telephone network ("PSTN") and the information services industry, and hopes to establish sound, long-term solutions. As the Commission has recognized by issuing the *NOI*, these questions are complex, with far-reaching implications, and necessitate a detailed investigation before rules are established. The Commission was wise in tentatively concluding that it should not make hasty decisions in such an important matter. Commenters wish to clarify, however, that they have not taken a final position at this time as to whether the Commission should ultimately remove the ISP exemption and how to structure any resulting fees; they merely urge the Commission to conduct a more thorough inquiry before taking any action.

The perils of rushing to a conclusion are all the more alarming in light of the estimates, by many commenters, including both LECs and ISPs, that applying the *present* access rates to ISPs would impede the future development of the Internet. *E.g.* AOL Comments at 7; Comments of Commercial Internet Exchange Association at 5 (CIXA Comments); Comments of BellSouth

Corp. at 87 (until long-term solutions are explored, changing the ESP exemption might only disrupt the marketplace). Commenters believe that the threat to the Internet from imposing *any* access rates requires more illumination; this is one purpose of the *NOI*. But it is clear that there is a non-trivial risk of damage to the development of this vibrant, rapidly-developing medium that would result from the current charge scheme. *NOPR* at ¶288.

**II. PARTIES HAVE NOT PRESENTED SUFFICIENT EVIDENCE TO ESTABLISH A NEED FOR THE COMMISSION TO IMPOSE USAGE-BASED FEES ON AN INTERIM BASIS.**

Several LECs agree that the Commission should adopt an interim usage-based pricing scheme if the Commission does not grant immediate relief. *E.g.*, Bell Atlantic/NYNEX Comments at 63-64 (interim charge might include a discount from current rates, proxy rates for unbundled local switching and transport, or negotiated or arbitrated rates for unbundled local switching and transport); US West Comments at 85. For example, PacTel argues that the Commission should remove the ESP exemption at the same time that it addresses interstate access charges. PacTel Comments at 75. It continues that if the Commission finds it will take time to reform the present access charge regime, it should adopt some sort of *interim* usage-based pricing scheme. *Id.* at 82. Specifically, PacTel urges waiving the CCLC, TIC, and reserve deficiency amortization payments for ESPs. *Id.* As a "less beneficial alternative" it suggests an explicit subsidy to compensate LECs until the Commission removes the exemption. *Id.*

Those LECs calling for imposition of interim fees simply have not proven the need for such extraordinary relief. They have not shown that in the few months between now and the Commission's consideration of the *NOI*, the PSTN will suffer irreparable damage or that they face severe economic loss. They also have not shown that an interim scheme will be any less

onerous on ISPs than imposition of the existing access charges would be. As already noted, it is unclear what effect such a pricing structure would have on this new industry and medium of speech. Moreover, any move - even temporarily - to usage-based fees would impose frictional costs on ISPs, such as installing new billing systems, publicizing the new rates, and loss of customers. Before imposing such costs, the Commission should require compelling proof of their necessity.

Nor have these LECs made clear many of the important details of their interim pricing plan. Most importantly, they have not described whether and how they will dedicate the proceeds from such charges to making long-term - or even short-term - improvements in their systems to reduce the problem of data traffic in the first place. Nor has PacTel explained what led it to the conclusion that it could adequately recover its costs by charging the existing access rates minus the CCLC, and how this would be sufficient to cover the costs to the network. None of the LECs has discussed a time frame for sunseting these charges. If the charges are to be imposed for just a short time, the result may be industry disruption and economic cost to ISPs. On the other hand, the charges could continue for years. If they do, they will more closely resemble a permanent policy change, and as such, should not be adopted with quick consideration and ambiguous evidence.

Another reason to refrain from adopting an interim pricing scheme until the Commission has gathered more evidence is to ensure that it adopts the best long-term solution. There is a widespread consensus among the parties commenting that the PSTN is ill-suited for data traffic. *See, e.g.,* Bell Atlantic/NYNEX Comments at 62-63; CIXA Comments at 9-10. But there is no consensus on how to remedy this. PacTel, for example, has responded that it has invested

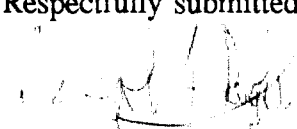
heavily to expand the capacity of the existing network. PacTel Comments at 76-77. Meanwhile, Commenters support improvements to the network through technological advances that better support data transmission and increase competitive access options available to Internet users.

Indeed, the Commission has heard evidence stating that such technological innovations may be just around the corner. For example, Bell Atlantic offers its "Internet Protocol Routing Service," Bell Atlantic/NYNEX Comments at 63, and Bell South has used the Nortel switching device. But although these technological remedies may improve switching capacity, they do not provide users with higher bandwidth access to the internet. Moreover, their pricing and deployment are still evolving. Given the rapid pace of evolution, it is quite possible that changes in technology will obviate the very need for access charges by the time the *NOI* is complete. If the Commission adopts PacTel's interim usage-based price plan, however, it risks institutionalizing the use of the voice network over the long term. Once again, the Commission should not act without further evidence that this is the best course of action.

### CONCLUSION

The parties urging the Commission to either subject ISPs to the current access charge scheme or to impose an interim scheme have not addressed what impact it would have on the ultimate beneficiaries of the technology, Internet users. In light of this, and because they have not shown conclusively that either system is warranted, the Commission should decline. It should agree with the large and disparate group of parties that urge it not to make a final decision on whether to apply usage-based fees to ISPs until after it has reformed the existing access charge system.

Respectfully submitted,



Joseph S. Paykel



Gigi B. Sohn



Andrew Jay Schwartzman

*Of Counsel:*

Daniel J. Weitzner  
Alan B. Davidson

CENTER FOR DEMOCRACY AND  
TECHNOLOGY  
1634 Eye Street, NW  
Suite 1100  
Washington, DC 20006  
(202) 637-9800

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MEDIA ACCESS PROJECT  
1707 L Street, NW  
Suite 400  
Washington, DC 20036  
(202) 232-4300